No. 80-1128

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ALEXANDER L. STEVAS,
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IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1980

CATHERINE ELIZABETH SCHWARZ,
Petitioner,

vs.

COASTAL RESOURCES MANAGEMENT COUNCIL,
STATE OF RHODE ISLAND, & CITY OF WARWICK,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
to the
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CATHERINE ELIZABETH SCHWARZ, PRO SE
PRESIDENT, CLEAN COVE COMMITTEE, INC.
374 SEA VIEW DRIVE, WARWICK, R.I. 02886
Tel. 401-738 7648

QUESTIONS PRESENTED

1. When the same Federal Judge enforces the Federal Water Pollution Control Act, (1972) and the Clean Water Act,(1977) in one case,and totally ignores his own opinion and Judgment,herein; where is the equal justice under the law?

2. When the State Court has made Decisions and Judgments in conflict with those given Petitioner,concerning pollution of our wetlands,salt marshes,and waterways(some already polluted)and ignores them where the highest grade of clean water is concerned; what recourse have we, the people,to protect our environment from the onslaught of political greed and collusion ?

3. When vast sums of Federal money have gone to R.I. to protect Public clean water and Federal laws have been violated to divert this money to Private schemes, which is now planning to bring 1,440,000

millions of gallons of raw sewage daily from polluted areas, to our Brush Neck and Buttonwoods Cove and Public City Park and Beach, where can we turn but to the Federal Supreme Court?

4. Where is the Constitutional justice and government of the people, when this project was voted down at 2 general elections and 2 public hearings and when approx. 1,000 people signed the petition to protect our cove from the ravages of sewage and diesel fuel from 2 sewer pumping stations, and have been discounted and miscounted?

5. That the Constitutional Amendments, One and Fourteen, "the right of the people to petition the Government for a redress of grievances", "nor deny to any within it's jurisdiction the equal protection under the laws", is, hopefully, true?

6. Why, with the cancer-rate of deaths highest in the nation and asbestos second

highest in carcinogenic effects, are the Defendants burying sewer and water pipe made of asbestos into our ground water where sand, abrasively, takes asbestos fibers into our drinking water, in some places, and our sea food chain and clam beds, at this contested site?

7. What is democratic or humane about this project that forces the poor and middle-income people to pay, at several thousand dollars each, for something they don't want or need; because the Defendant does need for planned condominiums in the floodplain, in one instance, and in clay, unfilterable soil, in the second, and does not want to pay for the sewers for their condos though they are wealthy enough to do so, would rather spread it over 20 years payments from the financially disadvantaged?

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CRMC stands for Coastal Resources Management Council.

DEM stands for Director of Environmental Management.

CWA means Clean Water Act.

UNITED STATES SUPREME COURT

CATHERINE E. SCHWARZ *
*
VS. * C.A.#_____
*
COASTAL RESOURCES *
MANAGEMENT COUNCIL, *
STATE OF RHODE ISLAND *
AND CITY OF WARWICK. *
*

PETITION FOR CERTIORARI

To the Honorable Judges of the Supreme Court of United States:

Your petitioner, Catherine E. Schwarz respectfully shows unto Your Honor that on the 6 day of October, 1980, the U.S. Court of Appeals for the First Circuit, denied the petition for a rehearing of C.A.# 80-1479. Denial of Appeal was received September 15,1980.

A plea for an Injunction to stop the building of 2 sewer pumping stations on the last clean water cove we have left in the City of Warwick which has our Public Park and bathing beach right in the middle, and is open to shellfishing year-round, is the only class "SA" water we

have to enjoy the recreational activities in and on the water, free of the septic sewage run-offs of our other Warwick coves, was,also,denied in U.S. District Ct. by Judge Francis J. Boyle on June 25,1980

This order and judgment contradicts Judge Boyle's Opinion in C.A.# 77-0374 wherein it is stated; "It has long been recognized in R.I. law that a municipal corporation may not acquire a prescriptive right to deposit sewage in the water of Narragansett Bay, and that the expense of avoiding the discharge of sewage is no defense to an order to abate pollution. Board of Purification of Waters v. Town of Bristol, 51 R.I. 243, 153 A. 879 (1931) & Board of Purification of Waters v. Town of East Providence, 47 R.I. 431, 133 A. 812 (1926). The policy and purpose of the Federal Water Pollution Control Act is consistent with what has been the law of this State for a considerable period of time." (Expert testimony by city engineer

Fred Hoernle,head of C.E.Maguire Co, said "this pump is the cheapest pump, with the cheapest system, in the cheapest place" at Sewer Commission Meeting;and at Public Hearing for Permit,"all they could afford at this time" in answer to question,"What happens when the pumps malfunction or the power goes off, or site is flooded out?" Because this site is in a base Floodplain and in a V-Zone where high velocity winds bring constant flooding to this site and 7 streets surrounding that site were evacuated the month previous to the notice of a Public Hearing and a sewer pumping station damaged by a Blizzard on the very day the notices were to be in the papers. Petitioner has documents from Sewer Commission Meetings and transcripts of Public Hearing to verify the above statements.)

"The initial effort at regulation had established standards for the acceptable levels of pollution in a state's navigable waters. This was an effort to regul-

ate the effect of pollution upon the quality of water. In 1972, the focus was shifted to preventable causes of pollution. EPA v. State Water Resources Control Bd., supra, at 202-203."

"The Federal Water Pollution Control Act was adopted by the Congress of the United States 'to restore and maintain the chemical,physical and biological integrity of the Nation's waters,' 33 U.S.C. 1251(a) (1978); established as a 'national goal that the discharge of pollutants into the navigable waters be eliminated by 1985,' 33 U.S.C. 1251(a) (1) (1978); and provides that 'an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.' Costle v. Pacific Legal Foundation, 48 U.S. L.W. 4243, 4244 (Mar. 18,1980)."

"The City has reaped a substantial reward by virtue of the Decree. Now it desires to change the bargain which it made. It may not do so."

The above is a direct quote from United States of America, et Al. v. The City of Providence, C.A. No. 77-0374, with Judge Francis J.Boyle for the District of Rhode Island. Change the City to Warwick and the bargain to the Agreement Governor Garrahy made with the Federal Agencies, e.i EPA. and NOAA. to comply with the Federal Water Pollution Control Act (1972), Clean Water Act of 1977, and all it's amendments and the Coastal Zone Management Act (1972 as amended, and regulations set forth at 40 FEDERAL REGISTER 1683, Jan.9,1975 and 41 FEDERAL REGISTER 48112, Nov. 2,1976, to get huge amounts of Federal dollars under the Agreement that Clean Water was to be protected.

To implement the above laws a survey was taken by the R.I. Health Dept. Water

Pollution Control to find where the clean water was, and to classify and grade all waterways, because to protect clean water it first has to be found, tested and identified. Problem areas were, also, identified so something could be done about them before they contaminated the remaining clean water. In compliance with the Clean Water Act Sec. 301 this was done in 1972 and 1974 with follow ups in later years.

Warwick was found to have a very bad problem in Warwick Neck because the soil there is clay and does not absorb the septic wastes from that area so it does not get filtered, instead straight pipe discharge into Old Warwick Cove (known locally as Warwick Cove) was and is being done and has turned Warwick Cove into a septic cesspool closed to shellfishing since 1974. The violations still go on and Marinas with about 1,000 boat slips add

to the problem, as does toilets at docks with straight pipes into the water. The problem cove with polluted water was classified "SB" and is surrounded by Warwick Neck on the east and Oakland Beach on the west. Oakland Beach has sand filtration so under normal conditions it can filter out all nutrients, which feed the soil, leaving clean water. That is why our cove, Brush Neck and Buttonwoods Cove was found to have the highest grade of salt water and classified "SA" and this was the body of water to protect. <u>This was then all changed around</u>, plans were made to put the sewer pumping stations on the only clean water and bring to it all the sewage from Warwick Neck and the dock side septic run-offs, and the planned condominiums in Warwick Neck and the Floodplains of Oakland Beach by underground and underwater <u>ASBESTOS</u> sewer pipes criss crossing the floodplain and nestling in our ground water to add <u>ASBESTOS FIBERS</u>

to our clam beds here in Brush Neck and Buttonwoods Cove, and to all our sea food in Narragansett Bay, as they are burying ASBESTOS sewer and water pipes all over Rhode Island.

George Smith of Coastal Resources Management Council said that burying ASBESTOS is the worst ecological problem facing our State. In front of a full auditorium at the Health Dept. Deputy Director Carlton Maine was asked why he allowed this to happen and he said, "The water pipes are made of asbestos and no one has been complaining about them." The Petitioner replied,"Two wrongs never made a right." and has been working to publicize this fact and get it rectified and have made it a part of our Complaint in the lower courts. The Petitioner did get OSHA to see that the workers,cutting the asbestos, wore masks; and buy only bottled water from out of state springs, as our water had gotten to the grit stage. Some

heavy plastic water pipes are now being put in, as of 5 months ago, when several Members of the Clean Cove Committee found the city bidding on more asbestos water pipes, and set up a protest. So new water pipes aren't carcinogenic, but for life-long residents where is the equality and human rights? Is it carcinogenic pipes forever? Last year, Rhode Island was told we have the highest rate of cancer deaths of the entire Nation, and John Mansville Co. phoned to try and soft-soap Petitioner and CLEAN COVE COMMITTEE into silence.

The last issue, on the Complaint to the lower courts, is the corrosive effects of political patronage. Lawyers that are hired as Environmental Advocates by the Governor, that don't know the CWA or Flood plain laws and don't enforce them, Why?? "Section 8ers" before a Grand Jury and it sounds like the reporters' trial, Why?? Rubber-stamping bad and destructive plans

even if most of them are affable people, it leaves an awful blank in positions of power where knowledge and intelligent action is needed, in some cases, desperately needed.

The Petitioner has come across one political appointee after another and all appointed by Philip Noel, ex-governor, now condo-builder and lawyer for other condo-builders, and his lawyer is Charles Butterfield, and Butterfield's associate in his law office is Francis Flaherty. Flaherty was put up as the councilman for our Ward 6. Flaherty put an article in the newspapers saying the pump was situated in the wrong place, a week before the primary election, but his first move after the election was to vote to put the sewer pumping station on this same clean cove. Barbara Colt was appointed by Phil Noel to be Chairwoman of the Coastal Resources Management Council, and 3 members told me

they would ask her opinion about the sewer pump, because she was the only one from Warwick on the Council. After the meeting was over a man called me and told me that Ms. Colt had talked to all of them before the meeting and he was sorry he had voted against us. What came of that was they all signed a false document, or rather 9 of the Council signed it. This document is the Decision of the Coastal Management Council and allowed the City of Warwick and the State of R.I. to be legally permitted to destroy and pollute. The Defendants had been going along without a permit for about a year already and we had to hire a lawyer to try to get a Public Hearing on this 7 months previous. Nothing came of it until 3 other landowners sued Noel and Company for not getting a permit on a previous condo project involving the Wetlands Act. Right then we the CLEAN COVE COMMITTEE, was told there was to be a Public Hearing on the Wetland

Permit because this pumping station was planned within 55 feet of a salt marsh and 70 feet from the open water. This important item was not allowed to be discussed. The lawyer we hired went on vacation and a lady lawyer valiantly tried to keep up with 4 lawyers on the floor at once and yammering like barking dogs til she could not think and just stood there. This case needed a person well versed in what was going on, and so when obvious lies were entered into the record she could have objected, or brought up the laws governing this situation; and she did not call the other witnesses, after the Defendants, all put in their oars. Some did get up and speak on their own and one member asked for the important vote by a show of hands on who wanted the sewer pump site moved. When Barbara Colt saw all the hands go up instead of recording the vote she gaveled the meeting to an end. One member went up

the aisle holding up her hand as she went. The Petitioner counted 73 people and was up to 68 second time, when Pat Zesk, lawyer, nudged her to turn around. "We were going to make a closing statement, weren't we?" It was too late. Everyone thought the lawyer should have insisted that the vote be entered in the record, because Defendants had put great importance on a Mar.8, 1978 meeting they had and a vote (alleged) of 58 of the political condo-sewer syndicate and only 3 residents of area to be sewered. This is not a fair proportion of the area residents; and the sewer pump was not discussed at Hearing, or before it. All evasion of the Floodplain laws, 1978, and complete violations of them.

The Defendants had already surveyed, and had plans made for condos on polluted side; and now have a paved road and sewer extension into it. This extension is not on plan that the EPA okayed, because De-

fendants continually say the sewer project is for the poor and middle income families of Oakland Beach instead of the reality that where ever they have put sewers so far they have put condos in and used more Federal money of the "section 8" HUD This way they get the poor to pay for the sewers they the Defendants have to have for their very profitable building projects.

We the taxpayers and residents are caught in the middle of this sneak attack by these political profiteers who intend to destroy our cove, and our Warwick City Public Park, and our environment for something most of us do not want, or need, and an overwhelming majority voted this project down at 2 major elections.

To overcome the will of the people the Defendants hold "sneak preview" elections in the middle of summer with about 3½% of the taxpayers participating they

(The Defendants) voted unto themselves several million to continue infesting us with ASBESTOS sewer pipes, tearing up roads and putting ugly manholes in front of porches that once only looked out on beauty, before they (the Defendants) showed up. Black tar, 7 ft. fence and barb wire, exhaust fumes of sewage and diesel fumes, and millions of gallons of filth rolling into this floodplain to come into our cellars with the next flood, and into this recreational area. To add insult to injury the Defendants intend to force us to pay veral thousand dollars for all these "IMPROVEMENTS". The President doesn't have to go to Russia to find oppressed people denied their human rights.

The Defendants say the Petitioner is suing because "the sewer pump is in her back yard. This is not true. The man whose backyard it was built in, is on the original Complaint to Superior Court,

CLEAN COVE COMMITTEE,INC. v. City of Warwick, et al. C.A. #79-1781, Prov.R.I. as 4 officials of the CLEAN COVE COMMITTEE signed it, Harry Walker,Paul Lachapelle, Eugene Montecalvo, and Petitioner.

Eugene Montecalvo died 2 weeks ago of a massive heart attack. The Defendants have made the last 3 years of his life a living Hell, of choking dust and sand. He could not open a door or window.It has been 3 years of going to meetings and Hearings to be lied to, or ignored, and 3 yrs of watching a monster grow in his backyard, with diesel fumes and sewage exhaust pipes and chain fence and barbed wire,instead of swans,beach and seascape. Even the Sewer Commission letter states; "No one should live northwest of a sewer pump unless they have double windows and air-conditioning." It also states that "reasonable people would not live in that

vicinity" because of the prevailing west, southwest winds. But Eugene Montecalvo, and his family was already living there and many other families. Fresh air, sea breezes and beautiful view are all being taken away from his family, and the same fate for residents of nearby streets.

The Petitioner, in this same house 35 years, has witnessed only benign neglect for this area, though on 2 occasions, large sums were granted to improve the recreational area. It vanished in City Hall.

Sewage systems take sewage through expensive pipes to nearby water and dump it in, with the added poisons of chlorine, etc. in one stage of filtration, or another, until the sewer facility malfunctions, or strike, flood, Hurricane or blizzard make it useless.

The Federal Government has tried to get States and Cities to stop this bad practice and will fund 85% to 100% for

ALTERNATIVES TO SEWERS because it is less expensive and keeps rivers and other waterways free to shellfish and swim in.

THE COMMITTEE ON PUBLIC WORKS findings concludes that rivers,lakes and streams are being used to dispose of man's wastes than to support man's life and health and the use of any river, lake,or stream as a waste treatment system is unacceptable.

Making fuel and fertilizer out of sewage at an inland site and alternative on-site systems have to be dealt with if we are to ever have clean water everywhere.

The exorbitant profits made buying cheap asbestos pipes at huge prices has the Defendants keeping ALTERNATIVES TO SEWERS on a back burner. Legal ads in the news state they will be discussed. But alternatives to sewers have never been discussed at any of our Public Hearings,another evasion of the law. At the Nov.15, 1979,Public Hearing,6 groups of people

said they preferred alternates to sewers and wanted information on them but was given none. The Clean Cove Committee had met previously and looked over the plans. We had Expert Testimony and voted down the second pump, unanimously. The Defendants want to connect the second pump to the first one, still being contested.

The Mayor said we needed Expert Testimony and to vote for, or against, the sewer pumps at the Public Hearing. We did exactly that and were ignored as the Defendants are still going ahead with their plans, regardless, of the Public Protest, and both pumps are planned for our last clean class "SA" water on Brush Neck and Button woods Cove in violation of the CLEAN WATER ACT, 1977 and it's AMENDMENTS, which states that clean water can not be defiled by sewage facilities.

CLEAN COVE COMMITTEE v. CRMC, et al. 79-1781 Superior Court, Prov. R.I. Dec. 17,

1979, went before Judge Wm. McKenzie and Petitioner was shut out in the hall until Presiding Justice was notified, and then resumed in open court. Judge McKenzie said angrily 3 times, this case was an imposition of his time as he had a heavy criminal calendar and why had an environmental case been heaped on him? After saying he had no time to study it, he did not allow for someone else to study it, by denying an appeal.

Petitioner was told to shut up, when lawyer, Armando Monaco, hired to present CLEAN COVE COMMITTEE's side, used lines of Defendants, that clean water would only be jeopardized in the building stage.

Petitioner was now being opposed by 4 lawyers instead of 3, as Armando Monaco did not present our Complaint, not once mentioning the laws of CLEAN WATER, FLOOD-PLAIN, etc. governing this action.

The Court doubted credibility of CLEAN

COVE COMMITTEE, though we organized March, 1978 and incorporated May16, 1979 and 4 officials signed original Complaint to Superior Court. As we left Court, Armando Monaco was congratulated for his help by Defendant's lawyer.

So in U.S. District Court, Petitioner went Pro Se and was still stopped from mentioning laws, by Mr. Foley, Esq. from Governor's office. Foley stood up and Petitioner was interrupted. These interruptions are seen clearly on the Court transcript. When Members of the CLEAN COVE COMMITTEE tried to bring this to Petitioner's attention, they were threatened with expulsion and someone was taken out. This was all going on behind Petitioner's back but she realized that she was not going to be allowed to cite the laws or the falsification of the CRMC Decision that allowed the permit to build, by 9 members of the Coastal Resources Manage-

ment Council. Petitioner realized if she was thrown out of court, no one would defend this case in a Higher Court.

Since Old Warwick Cove is polluted from septic run-offs and over 1,000 boat slips, and it is a commercial zone with about 11 Marinas, the wrong has been committed, by the politicians who changed the site to the clean water of Brush Neck and Buttonwoods Cove.

The fact that the C.E.Maguire Co. Eng. had pick the Old Warwick Cove side and gave no plausible reason for changing the site, was brought out at Feb. 8,1979 Public Hearing. This transcript and all other documents mentioned in this Petition are in a separate Appendix and all have been entered into the Courts in both Providence and Boston. Many people, in and out of City Hall have help to get these documents. We have not been able to get the Mar. 8,1978 one to see who was

there, and "allegedly" voted for this system (though admitting that the meeting was cut short before sewer pump site was discussed, because of bad weather).

Also, the zoning is for recreational use only. This was enacted after 2 Hurricanes took away every structure built there. This will save millions of tax-dollars for Disaster Loans, if heeded.

Floodplain laws prohibit building in the Floodplain, especially, the base floodplain in a high-risk Hurricane "V" zone. Designated "V" for Velocity wind area, and constant, yearly, flooding.

This entire area is protected by the Wetlands Act which states that salt marshes, because they propagate our sea food are to be protected. There is a set distance of 200 ft. from the perimeter of a salt marsh, for any building. Under a thin shelf of soil, this sewer pumping station will sit in 17 ft. of water. This

sewer pump site is only 55 ft. from a salt marsh so is a violation of the Wetlands Act, Coastal Resources Management Council's Program and Coastal Zone Management Act, and Floodplain Management Guidelines,1978, which is an up-date of the Clean Water Act ,1977 and its Amendments. As it says in Sec. 304 of the CLEAN WATER ACT,1977, Guidelines and Information that all new material for implementing the CLEAN WATER ACT will be published in the FEDERAL REGISTER one year later,1978, and from time to time thereafter, for implementing by May 24,1978, at the latest. This is an Executive Order 11988 and stated on page 17, Sec.7. of 43 FEDERAL REGISTER 6030, which is appended to this Petition, along with Sec. 301 - 309, CLEAN WATER ACT 1977, which pertain to laws governing this case

All the laws are on the Petitioner's side and Expert testimony from a renown Ecologist, Dr. Richard J. Benoit, Ph.D.

CONSTITUTIONAL PROVISIONS AT ISSUE

The Preamble of the United States Constitution states, "establish justice, insure domestic tranquility and promote the general welfare and secure the blessings of liberty to ourselves and our posterity."

Amendment 1. "The right to petition the government for redress of grievance."

Amendment 14. "nor deny to any person within its jurisdiction the equal protection of the laws."

All of the above is embodied in this petition, the protection of equal justice under the same laws that the Defendants have been enforcing; to secure the blessings we now have, clean water and clean air, for ourselves and the next generations to enjoy. The Clean Water Act has got to be equally enforced to the big polluters, the Cities and States, in this case, the Defendants, as well as the lone home-

owner, if we are to ever reach the attainable goal of clean water by 1983. This can not be accomplished by sliding under the wire, more pollution sources. We already have 86 from sewage facilities in Rhode Island.

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This deception started when the city planner asked the Director of Environmental Management to say Brush Neck and Buttonwoods Cove was slightly polluted, as there was a deadline of May, 24, 1978 to get the money, and they would change the plans afterwards. The Defendants got the money but didn't change the plans. After questioning, the D.E.M. James Spaulding left town. Gail Chmura "thought she was in Warwick Cove," and left for a long vacation and, "didn't have time to rectify her mistake." Nine Members of CRMC signed the lies into their Decision for Permit. John Lyons, Director of Coastal Resources

Management Council, signed it, too. He is in charge of the agency whose motto is, "To Preserve and Protect the Coastline", and he said he does not know that our cove was open to shellfishing year-round and since the world began. It was July and about 500 people were clamming and several hundred more boating and on the beaches, or at City Park. All enjoying the cove. But the Director of CRMC, he does not know.

Barbara Colt, the only member from Warwick, is a political appointee of ex-gov. Phil Noel and he is part of the syndicate needing sewers for condos. Ms. Colt said several members asked her about the project. None of the Council paid any attention to the truth and signed a paper that said we had "SB" waters, not navigable, closed to shellfishing, project which stores 750 gals. of diesel oil and raw sewage won't rm water. ERRORS of FACT

Wherefore, Petitioner prays for judgment against the Defendants as follows;

1. That the Defendants, and all persons acting by, through, or under the Defendants or by their appointments, in their represented status as officials or directors of said Council, State, and, or City, be restrained and enjoined from building any sewer pumping stations on, at, or near Brush Neck and Buttonwoods Cove, specifically between light poles #5 and #6 on the corner of Suburban Pkwy. and Sea View Drive; and another one that was voted down, unanimously, at a Public Hearing on Nov. 15, 1979, planned for our cove between Northup and John Streets, any sewage facilities of any type, anywhere near this clean "SA" highest classified salt water, and if they have put anything there while this Court Action is going on the Defendants will remove it, as it is an illegal action and a crime.

2. That the Defendants, and all persons acting by, through or under the Defendants or by their appointments,in their represented status as officers or directors of said Council,State,and,or, City,be restrained and enjoined of interfering with the rights of the Petitioner in reference to her prerogative as a resident and taxpayer, and one of a majority of people who will be the victims when this cove is destroyed by overflows of diesel fuel and sewage when a hurricane,flood,lack of power,or other breakdown cause this sewer pumping station, and any other,to become inoperable and 1,440,000 gals. of sewage daily overflow into this cove by gravity feed polluting our water and destroying our fishing and clamming,our park and beach,and bringing sewage into our homes and cellars.

3. That the Petitioner prays for a halt to any, and all, actions that

would endanger and degrade Brush Neck and Buttonwoods Cove, and a Judicial Review of all inequities claimed, herein, and all other relief which this Honorable Court may deem fit to award.

4. That the Plaintiff be awarded attorney's fees and costs for being forced to bring said action.

This entire statement is a true account of these events, so help me God.

Catherine E. Schwarz

CATHERINE E. SCHWARZ, PRES.
CLEAN COVE COMMITTEE
As, and for herself, Pro Se

Subscribed and sworn to before me on this day 12 of December, 1980.

Brenda B. Giorgio

BRENDA B. GIORGIO, Notary Public
State of R. I. and Providence Plantations
My Commission Expires June 30, 1981

CERTIFICATION: Copies sent to Thomas Mullaney, 75 Weybosset St., Dennis Esposito, 72 S. Main St., and Daniel Schatz, 56 Pine St. all of Prov. R.I. 02903.

Judge Giannini in a Superior Court case Charles Trefes v. Edward Hayes, Director of the Dept. of Natural Resources C.A.#72-1610, dealing directly with the INTERTIDAL SALT MARSH ACT (11-46 .1-1 G. L.R.I.) which is a direct predecessor to a portion of the Coastal Resources Management Act, the court specifically stated,

"The General Assembly has declared in Title 11, Chapter 46.1-1 that salt marshes are necessary to both finfish and shellfish to flourish if the constitutional right of fishery is to be enjoyed by our people. To give effect to this constitutional right, it is within the police power of the state to regulate the filling of such marshes and to prescribe a penalty for the violation of such regulations. (Citing, J.M. Mills, Inc. v. Murphy, 352 A. 2d 661 (1976)... It is the opinion of the court that the legislature notwithstanding the delegation of any

other power or duty to the defendant, may properly provide a penalty for an unpermitted filling of an intertidal salt marsh."

Judge Giannini originally stated that he was inclined to give the CLEAN COVE COMMITTEE a stay, when Petitioner first appeared before him. But not having a lawyer at that time, the court action had to await the hiring of a lawyer, (Mr. Monaco) who took our $500 dollars and went on vacation and only resumed the injunction action after nearly 6 months, and only when we said we wanted our money back. We met in the court hallway once where he told the Warwick City Solicitor "Judge Giannini is on the bench. You don't want to go before him do you? You know he was inclined to give a stay, don't you?" This was said right in front of me and I said, "I want to go before Judge Giannini and been waiting since May."

In United States v. City of Providence C.A.# 77-0374 before Judge Boyle. "The Court would note that although no City officers are specifically before the Court, the Decree is specifically binding on them, and that they might be brought before the Court and be required to adhere to the provisions... The City will still face all other means to require compliance available to this Court.[5]

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[5] These remedies are as expansive as necessary to accomplish the task. They include authority to designate the City's Chief Executive as receiver to be personally answerable to the Court for the operation of the plant. See United States v. City of Detroit, 476 F.Supp. 512, 520 (E.D. Mich., 1979). See generally Note, Implementation Problems in Institutional Reform Litigation, 91 Harv.L.Rev. 428 (1977); Note, Monitors: A New Equitable Remedy?, 70 Yale L.J. 103 (1960).

The verdict in the case of Shakman v. Democratic Organization of Cook County, 533F. 2d 344, 352 (7th Circuit Court,1976) was that political patronage was unconstitutional. Decision of Judge Nicholas J. Bua.

Page 147 of Coastal Resources Management Council's Program, Sec. 420.0-1,0-2 ends with the statement of joint responsibility of CRMC. and the Dept. of Environmental Management and local municipal recreational authorities. (None of which have done their job, or Warwick City Park and Beachfront and the shellfishing area of Brush Neck and Buttonwoods Cove would not now be in jeopardy.)

The conflict-of-interest laws are not enforced.Rep.John Assolone* said, "Either enforce the laws or close the dept. as a wasteful,useless boondoggle which does not do its job.There'll be tens of thousands (that is taken from the residents)

*Representative Assolone,Heads Tax Group.

in tax dollars saved by closing this expensive farce.

Nearly everyone the Petitioner has had to deal with is involved in a conflict-of-interest; Whether to do their job, or hold their job.

This political syndicate has bought power using Federal and local tax dollars and to buy up every valuable tract of land from Quonset Point to Crescent Park, and everything in between, for their own gain. Political appointees fill key posts in our environmental and attorney general offices, so it has been a great waste of time to find protection for the environment here. Though there is at least 25 citizen groups fighting for protection of their environment through the State, at present, and some have reach the Courts. Guy St. Andre of Boston E.P.A. is one of the worst stumbling blocks they will encounter. "It's bound to get polluted some

time", and "Raw sewage flooding the surrounding houses isn't the worst thing that can happen during a hurricane. After all, you can get typhoid shots." Catch phrases and trick pictures is how he does not protect the environment. Yet, he rubber stamps these violations and gives them added credence.

The Providence Journal and Evening Bulletin has chronicled some of these political shenanigans that touch on these agencies including HUD's Section 8, in Sept. 22,23,24,25, and Nov. 8,9,10,1979. and been entered into separate Appendix.

CLEAN WATER ACT, Sec. 309, (a) (1) whenever, on the basis of any information available to him, the Administrator finds that any person* is in violation of any condition or limitation which implements Sec. 301,302,306,307,308,318, or 405 of this CWA of 1977 in a permit issued by

*Sec.502,(5) means State,City,etc.

a State under an approved permit program under Sec. 402 or 404 of this Act, he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the 30th day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) through the U.S. District Courts.

(c) (2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon

conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 6 months, or both.

That this falsification of the Coastal Resources Management Council's Decision, which 9 members,knowingly,signed, to allow this permit in the first place, was brought up to Guy St.Andre at Boston EPA and he ignored it.

Judge Boyle was told by the Defendant lawyer, "That there was nothing he could do about" when Judge Boyle inquired if there was any way he could rectify this situation. His reply in separate Appendix

Sec. 509. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. The Petitioner and the CLEAN COVE COMMITTEE,INC. has been asking for a Judicial Review since May 24, 1979 on this violation of clean water when C.A. #79-1781 CLEAN COVE COMMITTEE v. CRMC, STATE of R.I., and CITY of WAR-

WICK. was timely entered in Superior Court, Providence,R.I. There was only a hearing on a Preliminary Injunction in Dec. 17,1979.

Sec. 505 CWA. CITIZEN'S SUIT'S.The District Courts shall have jurisdiction, without regard to the amount of controversy to enforce such an order,or to order the Administrator to perform such a duty or act, as the case may be, and to apply any penalties under Section 309 (d) of this Act, etc.

CRMC. PROGRAM PAGE 89 ANTIDEGRADATION No new discharges permitted into Class "SA" water. Prohibition will not apply where it is demostrated that discharge under most adverse conditions will not impair any usages specifically assigned to the class and the water will not be degraded below existing classification.

Into a base floodplain with yearly

flooding, and nearby homes at sea-level, comes 1,440,000 gallons of raw sewage daily to a location in a high-risk hurricane velocity "V" zone, where nothing ever built on that contested site has ever withstood the destuct force of wind and water so it is a vacant lot, and the Defendants think nothing adversely will happen to change the water classification in this Class "SA" Cove?

The defendants picked the site with the most adverse conditions to keep a sewer pumping station operable. There are safer sites and they are also city owned and even cheaper to construct and maintain as less piping needed. The Defendants have made a bad mistake, that can only get worst if they put sewage into it where it could, at the slightest whim of Nature, destroy our last clean shellfish cove and our Public City Park Beachfront.

Sec.401. Permits and Licenses. CERTIFICATION. If the imposition of conditions cannot issue such compliance the agency shall not issue such license or permit.

Sec. 402. (1) (ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts.

(3) To insure that the Public receives notice of each application for a permit and to provide an opportunity for Public Hearing before a ruling on such application.

Quoting the Defendant, "Where finding that an activity that is subject to these regulations could harm the Public and need therefore exists to restrain the injurious private action" Sibson v. New Hampshire (1975); 336 A. 2d 339 which specifically states, "An owner of land has no absolute and unlimited right to change the essential, natural character

of his land so as to use it for a purpose for which it was unsuited in its natural stand and injures the rights of others."

The City of Warwick is, in this case, the owner and should not be allowed to injure the rights of the Public. With 86 pollution points from sewage facility overflows making open cesspools out of Rhode Island waterways that the State and City can not clean up, why are they being allowed to make another open cesspool out of the last clean cove?

PREVENTION IS THE ANSWER and with equal justice under the law, this Court could enforce the CLEAN WATER ACT and the Defendants would have to revoke their permit,use a site out of the floodplain, and off class "SA" water. Alice Greene, et al. v. CRMC, C.A.#73-1113, #73-1103, and East Greenwich Yacht Club v. CRMC, 75-190 MP; 75-280 MP.have both been rem-

anded back to CRMC for a permit given for inappropriate use of coastal areas, from Providence Superior Court. In the Greene case; Sec.46-23-6B."In order to secure approval the applicant must demostrate that the proposal will not (1) conflict with any resources management plan or program (2) make any area unsuitable for any uses or activities or (3) significantly damage the environment of the coastal region."

"It is clear that the matter is a "contested case" within the meaning of the Administrative Procedures Act. Colonial Hilton Inns v. Rego, 109 R.I. 259,284 A.2d 69 (1971). Therefore, Sec. 42-35-12 applies. In its written decision the Council has attempted to make findings of ultimate fact in statutory language. Therefore, it was required to make findings of underlying facts in order to allow a reviewing Court to determine the basis upon which it acted. The decision

must be reversed for the Council's failure to make these findings."

"In addition, the Council made no finding as to whether the proposal in the application was in conflict with any resources management plan or program as required by Sec. 46-23-6B (1). In fact, the Council made no finding as to whether the proposal in the application was compatible with existing state and local management plans as is required by its own Coastal Resources Management Plan."

"Under the circumstances the decision of the CRMC. dated Mar. 23, 1973 must be and hereby is reversed. This matter is remanded to the Council for further proceedings to be conducted in accordance with this opinion."

"Whereas, marshes and other wetlands are among the most valuable of all wildlife habits and are high value recreational areas as well, and wildlife and

recreation are widely recognized as essential to the health, welfare, and general well being of the populace, and marshes and wetlands are increasingly threatened by undesirable projects, encroachment or other forms of destruction and are inadequately protected from such undesirable projects, and

Whereas, the protection of marshes, and other forms of wetlands from any form of disturbance or destruction is recognized being in the best public interest and essential to the health, welfare, and general well being of the populace and essential to the protection of property and life during times of flood or other disaster affecting water levels, therefore the provisions of the Wetlands Act are intended to preserve and regulate the use of such wetlands." Declaration of R.I. General Assembly.

A review of the cases suggests that the R.I.Supreme Court has upheld rather broad delegations of power. Standards not unlike the standards found in Sec.2-1-21 Wetlands Act for the guidance of the Director of the Dept. of Natural Resources. State v. Lombardi, supra;95 R.I.48, 182 A.2d 435 (1962) Opinion to Governor, 91 R.I. 346, 162 A.2d 802 (1960). The Director is to deny the application if it would not be "in the best public interest

R.I. CONSTITUTION,ARTICLE 37

Sec. 1. Preservation of Natural Resources

" 17. The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for their preservation; and it

shall be the duty of the general assembly to provide for the conservation of the air,land,water,plant,animal,mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resources planning for the control and regulation of the use of the natural resources of the state and for the preservation,regeneration and restoration of the natural environment of the state."

"The Coastal Wetlands Act envisions affirmative action on the part of the Dept. of Natural Resources to the end of establishing a state wide plan for protection of wetlands."Mills v. Murphy,supra.

Joseph and Linda Maria Marszulkowski of J.M.Mills,Inc. v. Director of CRMC. Dennis Murphy, supra. Director determined adverse effect on (1) wildlife (2) recreation (3) flood control. Most of land

in floodplain. Inconsistent with Public Interest. "Whereas, it is recognized that marshes and other wetlands,herein defined, act as a buffer zone and absorption areas for flood waters and whereas, all floodplains for all rivers,streams, and other water courses are certain to be overflowed with water periodically, in spite of all reasonable efforts to protect such occurrences." EXPERT TESTIMONY Dr. Wm. E. Kelly, Civil and Environmental Engineer, University of Rhode Island,Kingston,R.I.

EcoScience Laboratory, 490 Main Street Norwich,Connecticut 06360. Tel.(203) 889 8104. Impact of Proposed Oakland Beach Pumping Station on Water Quality in Brush Neck and Buttonwoods Cove.

Dr. Richard J. Benoit Ph. D.,Director

"My general conclusion is that the location of the pumping station in a flood-prone area on the intertidal em-

bayment off Brush Neck Cove is a serious error from the ecological standpoint.

1. Both BrushNeck and Buttonwoods Coves are Class "SA" according to Rhode Island Water Quality Standards 1975, a project report mandated by Federal law, and based on which the State has been made eligible for Federal Funding of water pollution abatement works. The Water Quality Plan does not permit the degradation of water quality levels prevailing in 1975, only there improvement. The proposed pumping station threatens to degrade water quality in the intertidal embayment and the adjoining coves, Brush Neck and Buttonwoods.

2. The west side of Oakland Beach is designated as a "problem area" in a plan available to the Public, 1979. Source; Original Data C.E.Maguire, Inc. That plan is in error; In a 3 day study shoreline

survey of the coves by the Health Dept. A concurrent bacteriological survey firmly established the absence of major sewage input. On the basis of this survey it was recommended that the coves (Brush-Neck and Buttonwoods) remain open to the taking of shellfish and they remain open to the present time.

In contrast to those conditions, a 3 day survey of Old Warwick Cove found about half of 30 water samples to be high in coliform bacterial counts and about 20 direct sewage discharges to Warwick Cove was recorded. Within the cove commercial Marinas with about 1,000 boat slips suitable for cabin cruisers with toilets, enormously aggravates the situation. Old Warwick Cove is polluted,"SB" Class in the State Water Quality Standards and is closed to shellfishing.

3. The intertidal embayment off Brush Neck Cove is part of an extremely productive complex of water, marshes and mud flats that comprise Greenwich Bay. No small part of that should be degraded or threatened by public agencies in view of the present encroachment and continuing pressure by the private sector. The embayment and the cove will be threatened by the construction and damaged during flooding when the sewer pumps are in operation. The greater the extent of sewer system served by this station, the more serious the threat.

Eleven years in a nuclear industry has taught me two principles concerning failure in engineering systems---

1. Failure rates are always higher than predicted by standard reliability engineering practices.

2. Failure modes will occur that are

not even anticipated by standard reliability engineering practices.

The mere fact that by-pass or overflow mode is built into most pumping stations emphasizes that failture can not be ruled out. A failure at this embayment would be an ecological and public health disaster. At the Warwick Cove location it might even go unnoticed.

Tying the proposed northwest section sewer system into this embayment location magnifies the threat to the Class "SA" Cove.

Administrative closures to waters surrounding sewer facilities, to prohibit shellfishing, is the future possibility. Sewage facilities are prone to failures, and Health officials, simply close water adjacent to sewage facilities as a matter of administrative policy.

The intertidal and cove belongs to the

people, neither private interests nor the state, should deprive the public of it's right to enjoy shellfishing in those few remaining waters that are still productive and still safe." EXPERT TESTIMONY

Dr. Richard J. Benoit,Ph. D. later wrote a letter to Petitioner stating; This pump was forbidden to put a by-pass on it but that does not stop the failure rate. The sewage will just back up on the gravity feed lines and come up into manholes and overflow into the streets!"(Since the street is right beside the water it will go into the water anyway, along with flooding into the low-lying homes in the immediate area,especially the ones connected up to sewer system will have back-up problems. That will help their morale and morals,according to Judge McKenzie)

Nothing about this project will benefit any of the residents,as it will destroy

the best thing we have, Our clean cove.

Many residents earn their living by shellfishing right out there, and do not need a car, or gas, or a boat. Just walk out and start clamming. Several residents said that being able to get clams out there, fed their families all through the Depression from Brush Neck Cove.

This project is not for the Public Health or Public Interest as the fumes in the air, from 6 diesel and sewage exhausts, and the certainty of flooding into their homes and polluting their cove, depriving them of a safe place to swim and fish, and earn a living. And the best thing for the area residents morals and welfare is not to destroy the clean water cove and threaten City Park with sewage. This is a beautiful, nearby, recreational area. A place to recreate in body, mind and spirit, that is what they

the residents want, and what they should be allowed to keep, clean and free of the sewage of other areas.

The irreparable harm will come, when and if, this violation of the law is allowed, and our cove polluted with sewage. Providence sewage run-offs have been going on for 30 years and has proved to be irreparable, and harmful to all living things. The Defendants have asked for millions and millions of Federal and local tax dollars to repair the Defendants past mistakes, on one hand, while spending more for the same mistakes, with the other. The Public Health and Welfare is better served by having clean water and clean air. The Federal government gave the Defendants several million dollars and the Defendants are using a large sum of it to destroy our clean water and clean air. How can the Courts allow this inhumane and illegal act??

Swansea loses suit to keep sewage out of Mt. Hope Bay

By JOSEPH DRISCOLL
Journal-Bulletin Staff Writer

DEC. 11, '80

TAUNTON, Mass. — A Superior Court judge cleared the way yesterday for Fall River to begin dumping partly treated sewage into Mount Hope Bay.

The Town of Swansea, which will be ordered to close its shellfish beds because of expected contamination caused by the discharge, had sought an injunction against the dumping.

Fall River officials said the dumping, estimated at 3 million gallons a day, is necessary in order to test and meet warranty requirements on $300,000 worth of new equipment at its two pumping stations. They expect to start dumping early next month.

The Massachusetts Department of Environmental Quality Engineering, which approved the discharge, said the Swansea shellfish beds would be closed during the two weeks of testing and for an additional 15 days, so the shellfish could cleanse themselves.

Judge Roger J. Donahue said he was not convinced that there was sufficient risk of irreparable harm to the shellfish beds to justify halting the discharge.

Swansea officials have not decided whether to appeal the decision.

Anne Giblin, a graduate student in a marine program at Boston University, had testified that the sewage, which will be chlorinated, would cause an unsafe level of bacteria and virus in the shellfish.

She said viruses, including the type that can cause hepatitis, could sutvive as long as 170 days in the contaminated shellfish. And, she said, there is no way to measure the virus in shellfish.

Bruce Assad, Fall River's lawyer, asked if she had an analysis of what was contained in Fall River's sewage. Miss Giblin said that she did not. She said she generalized, based on substances found in other municipal wastewaters.

Benjamin Haydock, 59, a shellfisherman who testified for Swansea, said that January is an important month for shellfishing. He said there were about 30 full-time shellfishermen and 20 part-timers who work the area.

WHEN ARE WE, THE PEOPLE, GOING TO ENFORCE THE CLEAN WATER ACT?

THE ONLY EXCUSE USED, AGAINST OUR CASE, IS THAT THEY NEVER DISCHARGE RAW SEWAGE.

POLITICIANS ALIBI FOR PUTTING CONTESTED SEWER PUMPING STATIONS ON CLEAN WATER, IS THAT IT WILL NOT EVER BE DUMPING OUT.

STATE OF RHODE ISLAND PROVIDENCE SUPERIOR COURT

C.A. No. 79-1781

CLEAN COVE COMMITTEE, INC.

v.

COASTAL RESOURCES MANAGEMENT COUNCIL, STATE OF RHODE ISLAND AND CITY OF WARWICK.

DECISION

Preliminary Injunction denied on Dec. 17, 1979. Judge Wm. MACKENZIE.

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Petitioner did not sign the Brief sent in by ARMANDO MONACO, lawyer that was to send in our case, but instead complied with Defendants case. Bar Association, Disiplinary Court, and Judge Mackenzie were all told on the day of entry of Mr. Monaco's Brief, that this was a false and frivolous Complaint he had sent in. Judge Mackenzie said, "he was a good lawyer". and Frank Carter said, "he was just stupid". But they threw the "good" lawyer's "stupid" case out; and blamed it on the CCC, INC.

UNITED STATES DISTRICT COURT FOR R.I.

CATHERINE E. SCHWARZ	*	
	*	
v.	*	C.A. NO.
	*	
COASTAL RESOURCES MANAGEMENT	*	80-0137
COUNCIL, STATE OF RHODE ISLAND	*	
	*	
AND CITY OF WARWICK	*	

ORDER

Petitioner's request for a Preliminary Injunction denied. Judge Francis Boyle. on June 25, 1980.

(Complete transcript in Separate Appendix)

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U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT

CATHERINE E. SCHWARZ	*	
	*	
v.	*	C.A. NO. 80-1479
	*	
CRMC, STATE OF R.I.	*	
	*	
CITY OF WARWICK	*	

ORDER OF COURT

Entered: October 6, 1980

Rehearing denied. Before COFFIN, CHIEF JUDGE, CAMBELL AND BOWNES, CIRCUIT JUDGES.

BY THE COURT: s/ DANA H. GALLUP, CLERK.